

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

MENES ANKH EL,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 1:17-cv-04335-JPH-TAB
	)	
KEITH BUTTS,	)	
	)	
Respondent.	)	

**ORDER DENYING MOTION TO PROCEED ON APPEAL *IN FORMA PAUPERIS*  
AND DENYING CERTIFICATE OF APPEALABILITY**

**I.**

The petitioner seeks leave to proceed on appeal without prepayment of the appellate fees of \$505.00. An appeal may not be taken *in forma pauperis* if the trial court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915; *see Coppedge v. United States*, 369 U.S. 438 (1962). “Good faith” within the meaning of § 1915 must be judged by an objective, not a subjective, standard. *See id.*

There is no objectively reasonable argument the petitioner could present to argue that the disposition of this action was erroneous. In pursuing an appeal, therefore, the petitioner “is acting in bad faith . . . [because] to sue in bad faith means merely to sue on the basis of a frivolous claim, which is to say a claim that no reasonable person could suppose to have any merit.” *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000). Accordingly, his appeal is not taken in good faith, and for this reason his request for leave to proceed on appeal *in forma pauperis*, dkt. [64], is **DENIED**.

## II.

“A state prisoner whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal.” *Buck v. Davis*, 137 S. Ct. 759, 773 (2017). Instead, the petitioner must obtain a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1); Habeas Corpus Rule 11(a) (district court must “issue or deny a certificate of appealability when it enters a final order adverse to the applicant”). “A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where a claim is resolved on procedural grounds (like untimeliness), a certificate of appealability should issue only if reasonable jurists could disagree about the merits of the underlying constitutional claim *and* about whether the procedural ruling was correct. *Flores-Ramirez v. Foster*, 811 F.3d 861, 865 (7th Cir. 2016). Because the petitioner has not demonstrated a substantial showing of the denial of a constitutional right or that reasonable jurists could disagree about whether any procedural ruling in this case was correct, his motion for a certificate of appealability, dkt. [65], is **DENIED**.

**SO ORDERED.**

Date: 4/3/2020

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